

From: Stein, AndrewDisabled
To: Sonfield, Brian; Brady, RyanDisabled; (b) (6) (b) (6)
Subject: FW: Am. Oversight v. U.S. Dep't of Commerce, No. 18-cv-534 (D.D.C.) shutdown and stay
Date: Tuesday, January 29, 2019 10:28:15 AM
Attachments: 32 notice to the court of restoration of appropriations.pdf

FYI, in the Secretary's calendar FOLA lawsuit, we've asked the court to extend our January 31 production deadline to March 7. Future deadlines would be moved commensurate with the length of the shutdown (so our bi-monthly productions would then shift to the 7th of every other month).

-----Original Message-----

From: (b) (6)
Sent: Monday, January 28, 2019 4:47 PM
To: Stein, Andrew <Andrew.Stein@treasury.gov>; (b) (6) (b) (6) (b) (6) (b) (6)
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Cc: (b) (6) (b) (6) (b) (6)
Subject: RE: Am. Oversight v. U.S. Dep't of Commerce, No. 18-cv-534 (D.D.C.) shutdown and stay

Colleagues

Welcome back, to those of you returning from furlough. When we sought a stay of this case due to the lapse in DOJ appropriations, we committed to notify the Court when appropriations were restored. We filed the attached notice based on a standard template we at Federal Programs are using officewide.

This notice addresses only court-ordered deadlines (court-imposed schedules applicable to Labor and Treasury and status report deadlines). It does not address other estimated timelines that we agreed upon with the plaintiffs or reported to the Court but that were not incorporated into any court order (which includes most other agencies' timetables for this case). We realize the lapse in appropriations will likely affect some agencies' ability to meet those earlier deadlines. We expect that we will address effects of that kind in our next status report (which we expect will be due April 10).

Thanks, and please get in touch if you have any concerns.

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(b) (6)
Senior Trial Counsel
U.S. Department of Justice, Civil Division, Federal Programs Branch tel (b) (6) email (b) (6)

-----Original Message-----

From: (b) (6)
Sent: Tuesday, January 15, 2019 13:11
To: Andrew.Stein@treasury.gov; (b) (6); (b) (6); (b) (6);
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(b) (6); (b) (6); (b) (6); (b) (6);
(b) (6); (b) (6); (b) (6); (b) (6);
Subject: Am. Oversight v. U.S. Dep't of Commerce, No. 18-cv-534 (D.D.C.) shutdown and stay

Colleagues

I wanted to update you on American Oversight v. U.S. Department of Commerce, No. 18-cv-534 (D.D.C.) (the case

pertaining to FOIA requests for calendars) and how we are proceeding in light of the lapse of Government appropriations.

We sought, and the Court granted, a stay of the case and an extension of current deadlines commensurate with the duration of the lapse of appropriations. See the attached motion and order.

Generally, we interpret this stay as applicable only to court-ordered deadlines for the agencies whose response to the FOIA request is directly affected by the lapse in appropriations. For example, if your agency has had a production schedule imposed by the Court, and your agency, including its FOIA functions, is not funded, we interpret the order as shifting your production schedule. We also believe the stay is applicable to the extent your agency is waiting for consultations from unfunded agencies. On the other hand, if your agency is funded and operating and you are not relying on consultations from unfunded agencies, your agency should not treat its schedule as shifted.

In this case, most of the agencies are not under court-ordered deadlines and are instead operating under timetables that we agreed upon with American Oversight and were not incorporated into any court order. While the stay order does not directly shift the agreed timetables, we believe the lapse in appropriations provides adequate justification for failure to meet the agreed timetables. So agencies affected by the lapse in appropriations can effectively shift their production schedules. Agencies not affected by the lapse in appropriations should continue to meet the earlier-agreed schedules, however.

We at DOJ are furloughed and therefore generally will not be available to advise or assist further until appropriations are restored. If something urgent comes up, though, please let us know and we may be able to seek an exception to provide assistance.

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Senior Trial Counsel

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMERICAN OVERSIGHT,)	
)	
Plaintiff)	
)	
v.)	Civil Action No. 18-cv-534 (KBJ)
)	
U.S. DEPARTMENT OF COMMERCE, <i>et al.</i>)	
)	
Defendants)	

NOTICE TO THE COURT OF RESTORATION OF APPROPRIATIONS

By minute order on December 26, 2018, this Court granted Defendants' motion for a stay of all proceedings in the above-captioned case commensurate with the duration of the lapse of appropriations for the Department of Justice and affected federal defendant agencies. As of January 25, 2019, funding was restored through February 15, 2019, for the Department of Justice, as well as for the affected defendant agencies, and the Department of Justice has now resumed its usual civil litigation functions.

Pursuant to the Court's order, each of the following deadlines should be extended by thirty-five (35) days as follows:

- Joint status report in response to November 21, 2018, minute order: originally due January 7, 2019, extended to February 11, 2019.¹
- Department of Treasury's periodic production of responsive records in accordance with September 18, 2018, Order Granting in Part Plaintiff's Motion for a Production Schedule, ECF No. 26, as clarified by October 1, 2018, minute order: originally due January 31, 2019, extended to March 7, 2019.

¹ The Court's November 21, 2018, minute order (1) directed the Department of Labor to review responsive records at a rate of 350 pages a month and (2) directed the parties to file a joint status report by January 7, 2019. The Department of Labor was not directly affected by the lapse in appropriations, and thus no extension was needed with respect to the review of records pursuant to the court-ordered rate of review. However, an extension is appropriate with respect to the joint status report due January 7, 2019, given the impact of the lapse in appropriations on the Department of Justice.

- Omnibus joint status report in response to December 10, 2018, minute order: originally due March 6, 2019, extended to April 10, 2019.

Date: January 28, 2019

Respectfully submitted,

JOSEPH H. HUNT
Assistant Attorney General

ELIZABETH J. SHAPIRO
Deputy Branch Director

/s/ (b) (6)
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